

ORDINANCE No. _____, SERIES 2007

AN ORDINANCE CHANGING THE ZONING FROM R-4 SINGLE FAMILY RESIDENTIAL TO R-7 MULTI FAMILY RESIDENTIAL ON PROPERTY LOCATED AT 6203 GELLHAUS LANE, CONTAINING 26.42 TOTAL ACRES, OF WHICH 12.92 ACRES ARE THE SUBJECT OF THE CHANGE IN ZONING (DOCKET NO. 9-36-06)(AS AMENDED).

SPONSORED BY: COUNCILMAN TOM OWEN

WHEREAS, the Legislative Council of the Louisville/Jefferson County Metro Government (the "Council") has considered the evidence presented at the public hearing held by the Louisville Metro Planning Commission and the recommendations of the Commission and its staff as set out in the minutes and records of the Planning Commission in Docket No. 9-36-06; and,

WHEREAS, ~~the Council concurs in and adopts the findings of the Planning Commission~~ has made findings of fact for the zoning change in Docket No. 9-36-06 ~~and approves and accepts the recommendations of the Planning Commission~~ as set out in said minutes and records; and,

WHEREAS, the Council has reviewed the record made by the Planning Commission and, based on that record, made different findings of fact that do not support the Planning Commission's recommendation, and wishes to override the recommendation of the Planning Commission, and,

WHEREAS, the Metro Council finds that the proposal for R-7 zoning as outlined in Docket No. 9-36-06 should be denied based on the fact that it is out of character with area developments, does not provide an appropriate transition between low density residential developments and the proposed high intensity residential development and does not comply with several relevant and important guidelines of Cornerstone 2020, and,

WHEREAS, the Metro Council finds that there have not been major changes of an economic, physical or social nature in the area that were not anticipated in the adoption of the

comprehensive plan and that have substantially altered the basic character of the area, and though there has been development in the form of an assisted living facility, a bus compound, an elementary/middle school campus and several single family subdivisions, these developments have been spread throughout the area as opposed to concentrated in the vicinity of the proposed development, and do not substantially change the low-density rural nature of the area such that the proposed high-density apartment development is now compatible, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 1.B.3 of Community Form/Land Use Guideline 1, Community Form, which states that the Neighborhood Form District, in which the proposed development would be located, is characterized by residential uses that range from high to low density that blend compatibly into the existing landscape and neighborhood areas, because the proposal would introduce a high-density apartment development into an area characterized by R-4 and lower-density residential uses, and that, although there are two non-residential uses in the area (a new Jefferson County Public School complex including an elementary school, middle school and bus compound, and an assisted living facility), the area is predominately rural and low density, and the proposed apartments will not blend with the existing character of the area, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 1.B.3 of Community Form/Land Use Guideline 1, Community Form, which also states that high-density uses will be limited in scope to minor or major arterials, because the development site for the proposed apartments is located several hundred feet down Gellhaus Lane from Billtown Road, and because Gellhaus Lane, despite the fact that it will be widened to three lanes from the development site to Billtown Road, is classified as a collector level road, and functions as a rural residential road, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 1.B.3 of Community Form/Land Use Guideline 1, Community Form, which also states that neighborhoods are encouraged to incorporate different housing types within the

neighborhood as long as the different types are designed to be compatible with nearby land uses, because though the proposed apartments would constitute a new residential form in this area, which has been characterized as rural, low density single-family residential, the design of the apartments includes buildings of a mass and scale significantly larger than those of surrounding neighborhood uses (buildings of between 25 and 35 feet in height and between approximately 22,000 and over 37,000 square feet in area), and buildings located within 20-30 feet of roadway corridors and single-family residences, and,

WHEREAS, the Metro Council further finds that the proposal fails to comply with this aspect of Policy 1.B.3 of the Comprehensive Plan because, though the Jefferson County School District's new complex on Gellhaus Lane also features buildings of a mass and scale significantly different than those of surrounding areas, the impact of those buildings is mitigated through the use of significant setbacks (much more than 20 feet) from Gellhaus Lane, and the inclusion of large expanses of land in the form of playing fields and open space that separate the school buildings from adjacent residential uses, and such design features, which could mitigate the impact of the mass and scale of the apartments, are absent from the proposal in Docket No. 9-36-06, as only 1.88 total acres of open space spread through three separate areas is provided, and all open space areas are internal to the site and not visible as a buffer from Gellhaus Lane, and only a small elongated portion of the proposed open space separates the proposed apartments from the immediately adjacent proposed single-family residential lots, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 3.1 of Community Form/Land Use Guideline 3, Compatibility, which states that all new development should be compatible in terms of scale and site design of nearby existing development and with the pattern of development in the form district, because the proposed apartments are significantly larger in terms of mass and scale than existing residential uses in the immediate area, and because though a new Jefferson County Public School District

facility, which includes an elementary and middle school complex and a bus garage, is located immediately adjacent to the site, this use functions as a campus with large setbacks between the street and the structures, and significant land dedicated to playing fields and other open space areas that serve as buffers and preserve the rural character of the area, and does not result in the same impact to the community as would the proposed apartments, which do not include large setbacks or significant expanses of open space that would better blend with the existing character of the area, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 3.3 of Community Form/Land Use Guideline 3, Compatibility, which states that residential character that is compatible with adjacent residential areas should be encouraged, and that adjacent residential development in different density categories should be allowed if actions are taken to mitigate impacts of the higher density development on the lower density development, because the existing and proposed single-family residential development in the vicinity of the development site is all considered by Cornerstone 2020 to be low-density development (less than 5 dwelling units per acre), but the proposed apartments at a density of 22.83 dwelling units per acre are considered to be high-density residential uses (between 12 and 35 dwelling units per acre), and the development does not propose a medium-density (between 5 and 12 dwelling units per acre) use as a transition to buffer the low-density uses from the high-density uses, and does not provide wider setbacks, more significant landscape buffers, fences, or other mitigating measures to compensate for this minimal transition, and,

WHEREAS, the Metro Council further finds that the proposal in Docket No. 9-36-06 fails to comply with Policy 3.3 of the Comprehensive Plan because the proposal includes a variance for the reduction of required front yards along lots 1, 3, 8 and 9 of the proposed single-family residential property immediately adjacent to the proposed apartments, which further reduces the distance between the high-density apartments and the low-density-single-family homes proposed for the development, and provides less of a buffer than if the appropriate amount of

required front yard was provided for these lots because the new street to serve these lots will be closer to the fronts of the houses than would typically be permitted, and therefore these homes will be surrounded by less total private yard that could serve as a buffer than is otherwise required under the Land Development Code, and,

WHEREAS, the Metro Council further finds that the proposal in Docket No. 9-36-06 fails to comply with Policy 3.3 of the Comprehensive Plan because the proposal would add 290 apartments to the area on only about 12 acres of land, which, as shown on an exhibit provided to document area development approved over the past few years, is only approximately 90 dwelling units less than the total number of dwelling units approved for the area through the development of several low-density-single-family neighborhoods, and this represents a drastic and inappropriate change to the character of the area, and

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 3.9 of Community Form/Land Use Guideline 3, Compatibility, which states that the character of residential areas and roadway corridors should be protected from visual intrusions through mitigation measures, because the current character of the Gellhaus Lane corridor is predominately rural residential, and the introduction of the proposed apartments would significantly impact that character by introducing a more urban residential form to the area where no such development pattern currently exists, and

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 cannot be classified as being located in or near a Center, as that term is defined by Cornerstone 2020, because the definition of Center states that it is a compact, walkable activity area containing a mixture of land uses, including retail, restaurants, services such as a post office, bank or library, and sometimes residential uses, and the area in which the proposed apartments would be located contains only an assisted living facility, an elementary and middle school, a bus garage, and a variety of low-density-single-family residential homes in neighborhoods and on rural lots, and, though the proposed apartments would contain pedestrian connections to the adjacent

school facility, would connect to sidewalks along Gellhaus Lane, and would lead to a variety of internal walking paths, the area cannot be considered a Center, as it lacks any form of basic service, including a public library, post office or bank, is miles away from the nearest retail stores or grocery, and contains no amenities within walking distance of the proposed apartments that serve the daily needs of area residents, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 3.11 of Community Form/Land Use Guideline 3, Compatibility, which states that higher density and intensity uses should be located along transit corridors and in or near activity centers, because there is no transit service along Billtown Road or Gellhaus Lane, and none within walking distance of the proposed development, and because the closest activity center is several miles away, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 3.21 of Community Form/Land Use Guideline 3, Compatibility, which states that appropriate transitions, such as buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements, should be provided between uses that are substantially different in scale and intensity or density of development, because the proposed single-family component of the proposal would include 37 R-4-zoned-single-family lots at a density of 3.5 dwelling units per acre adjacent to the proposed R-7-zoned property to be developed as apartments at a density of 22.83 dwelling units per acre, and the proposal fails to provide an appropriate transition such as a fence, berm or significant area of open space between these two vastly different densities; the Metro Council finds that the nearest apartment building will be approximately 22 feet from the rear property line of the proposed single-family lots, and that the proposed garages to serve the apartments will be approximately 20 feet from the rear property line of these lots, and that this distance is insufficient to buffer a single-family home from the mass and scale of the proposed apartments, which range from approximately

22,000 square feet in area and 25 feet in height to over 37,000 square feet in area and 35 feet in height, and,

WHEREAS, the Metro Council further finds that the proposal in Docket No. 9-36-06 does not comply with this policy of the Comprehensive Plan because, though a 20-foot wide landscape buffer will be provided between these uses, the mass, scale and density of the proposed apartments is so out of proportion with the proposed and existing adjacent single-family uses that this buffer will provide an inadequate transition between the significantly lower-density single-family homes and the high-density apartments, and this buffer is further diminished as a result of the request for a variance to provide less front yard than is required under the Land Development Code for four of the single-family residential lots located immediately adjacent to the proposed apartments, which will have the effect of bringing the proposed "Street A" closer to the fronts of these homes without compensating for this encroachment through more significant rear yards or other measures, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 3.22 of Community Form/Land Use Guideline 3, Compatibility, which states that impacts caused when incompatible developments unavoidably occur adjacent to one another should be mitigated through the use of buffers, including landscaped or vegetated berms or walls to address issues such as lighting from buildings or automobiles, loud noise, automobile exhaust or other smells, and visual nuisances, because the proximity of the proposed and existing single-family homes to the proposed apartments has not been adequately mitigated, and in some cases, rear yards of the single-family homes are within 20 feet of proposed apartments, garages and vehicular parking and maneuvering areas, and the density of the proposed apartments (22.83 dwelling units per acre) is over 6 times the density of the proposed single-family homes, and is so out of character with existing area development that these proposed buffer areas do not provide an appropriate buffer between uses that are significantly different in terms of density, mass and scale, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 3.23 of Community Form/Land Use Guideline 3, Compatibility, which states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet the form district guidelines, because the proposed apartments will introduce the first three-story residential element to this area, which is currently characterized by low-density and low-intensity residential development, often on larger rural lots, and this introduction of height is accompanied by the introduction of buildings of a mass and scale completely out of proportion with other area residential uses, since the proposed apartments will range in size from approximately 22,000 square feet to over 37,000 square feet in area, and because these significant differences have not been adequately mitigated through setbacks, transitions from lower density to higher density within the development, fences, increased or strategically placed open spaces, or other design measures, and,

WHEREAS, the Metro Council further finds that the proposal in Docket No. 9-36-06 does not comply with Policy 5 of Community Form/Land Use Guideline 4, Open Space, which encourages the integration of natural features into the pattern of development because the proposal includes the filling of two ponds that exist on the site, which will remove a water resource that could affect drainage and water recharge capabilities of the site and the area, and because none of the existing tree canopy on the site will be preserved as part of the development process, and these resources contribute to the character of the area, and are integral to the preservation and protection of the environment, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with Policy 7.3 of Mobility/Transportation Guideline 7, Circulation, which states that developments should be evaluated for their ability to promote mass transit and pedestrian use, because the proposed high-density development is not located in close proximity to uses that serve the daily needs of the residents, and is not located within walking distance of a transit line, which would provide an alternative form of transportation for the residents, and,

WHEREAS, the Metro Council finds that the proposal in Docket No. 9-36-06 does not comply with the policies of Livability/Environment Guideline 11, Water Quality, which is intended to prevent the degradation of water quality due to water pollution and erosion, because, though MSD has approved the water-control measures proposed for the development site as they technically comply with MSD's regulations on the subject, water from the proposed single-family homes will run off directly into the Chenoweth Run Creek, which has been classified as having extremely degraded water quality, and will have an adverse impact on that creek, due to the presence of higher concentrations of pollutants, including potential erosion, petroleum products associated with automobiles and lawn maintenance, and herbicides, pesticides and other lawn- and garden-care chemicals used by the residents of the proposed single-family homes, and,

WHEREAS, the Metro Council further finds that the proposal in Docket No. 9-36-06 does not comply with the policies of Livability/Environment Guideline 11, Water Quality, because the proposal includes the filling of two ponds that exist on the site, which will remove a water resource that could affect drainage and water recharge capabilities of the site and the area, and,

WHEREAS, the Metro Council hereby denies the proposal for R-7 zoning as outlined in Docket No. 9-36-06, and the zoning on that portion of the proposed development shall remain R-4 single-family residential,

NOW THEREFORE BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

Section I: ~~That the property located at 6203 Gellhaus Lane, containing 26.42 total acres, 12.92 of which are subject to the change in zoning, more particularly described in the minutes and records of the Planning Commission in Docket No. 9-36-06 is hereby changed from R-4 Single Family Residential to R-7 Multi Family Residential, provided, however, said property shall be subject to the binding elements as set forth in the minutes of the Planning Commission in Docket No. 9-36-06.~~ That the findings of fact set forth above are hereby adopted by the Metro Council

Section II: That the Metro Council hereby overrides the recommendation of the Louisville Metro Planning Commission and finds that the proposal is not in agreement with Cornerstone 2020, the Comprehensive Plan, and that the existing zoning on property located at 6203 Gellhaus Lane is appropriate and the proposed zoning is inappropriate.

Section III: That property located at 6203 Gellhaus Lane, containing 26.42 total acres, 12.92 of which are subject to the proposed change in zoning, more particularly described in the minutes and records of the Planning Commission in Docket No. 9-36-06 hereby remains zoned R-4 Single Family Residential.

Section IV H: This Ordinance shall take effect upon passage and approval.

Kathleen J. Herron
Metro Council Clerk

Rick Blackwell
President of the Council

Jerry Abramson
Mayor

Approved: _____
Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

By: _____